when the decision was adopted and, secondly, a measure does not cease to be a regulation because it is possible to determine the number or even the identity of the persons to whom it applies at any given time as long as it is established that such application takes effect by virtue of an objective legal or factual situation.

REPORT FOR THE HEARING
delivered in Case 206/87 *

I — Summary of the facts

The applicant, a banana ripener, applied on numerous occasions for import licences to import into France bananas originating in non-member countries or released into free circulation in other Member States of the Community.

The applicant brought proceedings before the French courts in respect of the French authorities' refusal to grant the licences. Thus, the tribunal administratif (Administrative Tribunal), Lille, by judgment of 19 June 1985, ordered the French Republic to compensate the applicant for the damage suffered by it as a result of the refusal to grant import licences for the importation of bananas from Belgium and Somalia. The French Government appealed against that judgment to the Conseil d'Etat (State Council).

By letter of 21 February 1979, the applicant lodged a complaint with the Commission against the French Republic about the restrictions imposed on the importation of bananas into its territory in breach of Articles 30 to 36 of the EEC Treaty and of the Lomé Convention of 28 February 1975 (Official Journal 1976, L 25, p. 1).

On 30 April 1987 the French Government applied to the Commission under Article 115 of the EEC Treaty for authorization to exclude from Community treatment fresh bananas falling within tariff heading 08.01 B of the Common Customs Tariff and originating in non-member countries known as dollar-area countries and in ACP States other than the traditional suppliers of France (Ivory Coast, Cameroon and Madagascar).

Since the Commission took the view that France was continuing to apply quantitative restrictions on imports of bananas originating in non-member countries belonging to the dollar area in accordance with Council Regulation No 288/82 of 5 February 1982 on common rules for imports (Official Journal 1982, L 35, p. 1) and that there were differences in the commercial measures applied by the Member States with

* Language of the case: French.

regard to the importation of the said bananas which could give rise to economic problems for French national production and could disturb the balance of the French market, it authorized the French Republic, by decision of 8 May 1987 (Official Journal 1987, C 127, p. 4) addressed to the French Republic, to exclude from Community treatment until 30 April 1988 bananas originating in non-member countries belonging to the so-called dollar area and released into free circulation in the other Member States.

On the other hand, as regards bananas originating in ACP countries and released into free circulation in the other Member States, the Commission considered that, in view of the fact that the exporting capacity of the ACP countries was limited, the risks referred to by the French Government were merely potential and that it was not appropriate to grant the French Government's request in that regard.

II — Written procedure and conclusions of the parties

Considering that the aforesaid decision was contrary to Community law, the applicant, by an application lodged at the Court Registry on 7 July 1987, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the decision is void.

By a document lodged on 11 August 1987, the Commission requested the Court under Article 91 (1) of the Rules of Procedure to give a ruling on the admissibility of the application without considering the substance of the case. The Commission claimed that the application should be dismissed as inadmissible and that the applicant should be ordered to pay the costs.

In its observations lodged on 17 September 1987, the applicant claimed that the objection of inadmissibility should be dismissed or considered together with the substance of the case and that the Commission should be ordered to pay the costs.

Upon application to intervene, lodged at the Court on 3 November 1987, the French Republic was given leave, by order of 11 November 1987, to intervene in support of the Commission's conclusions.

By a statement lodged on 8 January 1988, the French Republic claimed that the application was inadmissible.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court, by decision of 13 July 1988, opened the oral procedure without any preparatory inquiry. However, it requested the parties to produce certain information.

By decision of the same date, the Court also decided to assign the case to the Second Chamber.

III — Submissions and arguments of the parties on the admissibility of the application

The Commission maintains that the decision at issue is not *of direct concern* to the applicant. It states that the decision does not give rise to any obligation on the part of the French Republic but merely authorizes it to exclude from Community treatment bananas originating in non-member countries belonging to the dollar area and released into free circulation in the Communities. It is at liberty to decide whether or not to make use of that authorization. Conse-

quently, the national authorities have a discretion the exercise of which results in a national implementing measure, either acceding to or refusing the grant of import licences, and only that measure is of concern to the applicant.

The Commission's decision cannot be characterized as validating the commercial rules applied in France because, quite apart from the fact that the decision relates solely to imports of bananas originating in non-member countries belonging to the so-called dollar area, it has no retroactive effect.

The Commission also takes the view that the decision at issue is not *of individual concern* to the applicant.

(a) It states that the decision relates to all imports of 'dollar-area bananas' released into free circulation for a specific period. It therefore concerns any person seeking to import 'dollar-area bananas' released into free circulation and concerns the applicant in the same way as any other trader who is actually or potentially in the same situation.

As regards importers of 'dollar-area bananas' the decision at issue is therefore to be regarded as a measure of general application covering situations which are determined objectively and it entails legal effects for categories of persons envisaged in a general and abstract manner.

(b) In addition, the fact that the Commission was aware of the applicant's situation is not conclusive since a measure does not cease to be a regulation because it is possible to determine the number or even the identity of the persons to whom it applies at any given time as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in relation to its purpose.

Finally, the Commission points out that the applicant does not even refer to the fact that the Commission's decision was adopted at a time when licence applications were pending.

According to the French Republic, the question whether the decision is of individual concern is closely linked in this case to the question whether it is of direct concern and both questions call for the same reply. Only the fact that authorization was sought by a Member State under the first paragraph of Article 115 of the EEC Treaty with regard to licences previously applied for calls for an affirmative reply to the question of direct concern and then that of individual concern.

Since the decision at issue has no retroactive effect, it is neither of direct nor of individual concern to the applicant and the application must therefore be inadmissible.

The applicant takes the view that the decision at issue is *of direct concern* to it because its object is not to enable a Member State to exclude certain bananas from Community treatment but to validate and confirm the organization of the French banana market which was established prior to 30 April 1987 on the margin of Community legality.

Prior to that date the French Republic had not authorized any imports of bananas originating either in the ACP States or in non-member countries and released into free circulation in a Member State of the Community.

According to the applicant, the Commission must have known of the irregular situation regarding the French market prior to 30 April 1987 because the applicant had drawn its attention to the situation prior to that date and cannot deny that by the decision at issue was confirming a measure which was already in force and which had been applied by the French Republic for a number of years.

The Commission cannot therefore reasonably maintain that the French Republic was at liberty to decide whether or not to make use of the authorization conferred on it by the decision at issue since it had already conferred such authorization on itself prior to the adoption of the decision.

The applicant takes the view that far from applying in an abstract manner to all traders seeking to import bananas into France during the period of validity of the decision, the decision is *of individual concern* to the applicant by reason of circumstances in which it is differentiated from all other persons and which distinguish it individually just as in the case of the person to whom the decision is addressed.

Since 1977 the applicant has repeatedly applied for import licences for bananas originating in non-member countries or released into free circulation in other Member States, but without success. In addition, imports of bananas from Belgium have been repeatedly turned back at the border on the ground that their importation was prohibited. The applicant has brought the matter before the national courts and the Commission in order for an order to be made against the French Republic for its infringements of Community law.

The Commission, which was seised of the matter by the applicant in an economic context and on the basis of legal considerations which were identical to those upon which the French Republic was able to rely in its request for authorization dated 30 April 1987, could not have been unaware when it adopted the decision at issue, first that the statement of reasons for the French Republic's request and the objective it was seeking to attain were unlawful, and secondly that the circumstances of the request for authorization were linked directly to the various proceedings set in motion against it primarily by the applicant.

IV — The replies to the Court's request for information

1. The Commission produced the following:

(i) first, the text of the request submitted by the Government of the French Republic on 30 April 1987 under the first paragraph of Article 115 of the EEC Treaty, in which it sought authorization to exclude from Community treatment fresh bananas originating in certain non-member countries and released into free circulation in the other Member States;

(ii) secondly, the text of the statement of reasons upon which the Commission's

decision of 8 May 1987 concerning the aforementioned request submitted by the French Republic was based, which summarizes the data supplied by the French Government under Article 3(2) of Commission Decision No 80/47 of 20 December 1979 (Official Journal 1980, L 16, p. 14).

2. The applicant produced a list of the applications for import licences submitted by it and of the attempts which had been made to get the goods across the border as at 30 April 1987. It appears that its last application for a licence was submitted on 17 October 1986 and that the last time when the French Customs turned back bananas bought in free circulation by the applicant was on 3 March 1987.

The applicant pointed out in this regard that it had already brought an action for compensation in the tribunal administratif, Lille.

The applicant stated that it was therefore clearly in dispute with the French State and that the decision of 8 May 1987 by which the Commission authorized the French State to exclude bananas from Community treatment was necessarily of direct interest to it.

T. F. O'Higgins
Judge-Rapporteur